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~~PRELIMINARY~~ SUBMISSION

TO
THE ROYAL COMMISSION ON THE WORKMEN'S COMPENSATION ACT

BY
THE AUTOMOTIVE TRANSPORT ASSOCIATION OF ONTARIO

INTRODUCTION

The Automotive Transport Association of Ontario is a voluntary association of proprietors and companies engaged or directly interested in the inter-city truck transportation business. The association is broadly representative of the truck transportation industry, embracing not only for hire inter-city transportation services but also firms whose trucking operations are an adjunct to other lines of endeavour.

Our members are included in Class 20 of the regulations made by the Board under the Workmen's Compensation Act. In the main, assessments are made under Rate 656.

In 1963, some 4,844 operations having a payroll of

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about \$129,000,000.00 were assessed under Rate 656. In 1964, these figures increased to 4,877 operations with a total payroll of \$143,724,000.00.

GENERAL COMMENTS

The proposals set forth in this Submission may be grouped under four main headings:

- (a) Proposals to Reduce the Costs and Properly to Allocate the Costs of Industrial Accidents.
- (b) Proposals to Reduce and Prevent Abuses of Workmen's Compensation Legislation.
- (c) Proposals to Improve the Administrative, and in Particular, the Appeal Procedures of the Workmen's Compensation Board.
- (d) Proposals with Respect to Accident Prevention and the Role of the Transportation Safety Association of Ontario.

In each of the above areas, our Submissions are predicated upon the following principles:

1. The cost of Workmen's Compensation is borne by

employers and may not be passed on to employees. Hence, in the long run, Workmen's Compensation must be borne ultimately by consumers of goods and services, whether within Ontario or as export customers. These costs form an important element in the cost of doing business, particularly in labour-intense industries such as the trucking industry where even before the last round of negotiations (which resulted in substantial wage increases) labour costs ranged between 40 and 55% of total operating expenses.

2. Workmen's Compensation was designed as and should remain a means of preventing hardship resulting from accidents in the course of employment. The growth of Social Insurance programs and easily obtainable accident insurance has eliminated some of the potential hardships which led to the passage of the original Workmen's Compensation Act. Many employers

contribute substantially to hospitalization and medical plans in addition to meeting their liabilities under the Workmen's Compensation Act; some employees are covered by policies of insurance which add to the compensation for disability provisions of the Workmen's Compensation Act.

3. Abuses of the Act, whether by way of fraudulent claims or malingering must be prevented insofar as it is possible to do so.

4. Where injuries occur charges against employers should be fair, and should relate to costs resulting from accidents arising out of employment by the employer to be charged.

5. All parties affected by any decision made under the Act, whether as to charges levied against an employer, or in the settling of claims, should have the right to be heard by the deciding tribunal, and should have access, as far as is

possible, to the facts upon which the tribunal will base its decision.

6. The Transportation Safety Association of Ontario, as presently constituted, performs a valuable service in accident prevention. No steps should be taken which could impair or hinder the future efforts to the Association under the leadership of its elected directors to continue to improve the safety record of the industry.

7. One purpose of the Workmen's Compensation Act should be to encourage and promote effective accident-prevention programs whether sponsored by the Safety Associations or individual employers.

A. PROPOSALS TO REDUCE THE COSTS AND PROPERLY TO
ALLOCATE THE COSTS OF INDUSTRIAL ACCIDENTS

1. At present, some 99% of the people of Ontario are

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insured against hospitalization costs by The Ontario Hospital Services Commission. An exception is made in relation to Workmen's Compensation cases which are not covered. In light of the fact that many employers contribute to Ontario Hospital Services Commission premiums on behalf of their employees, this places a double burden upon employers. It is therefore respectfully submitted that hospitalization costs of Workmen's Compensation cases should be borne by the Ontario Hospital Services Commission as an integral part of its broad program of hospitalization insurance. Such a step would result in no change in the benefit rendered to injured workmen, but would simply bring about a proper allocation of the costs of the service involved. If a compulsory program of medical care insurance comes into effect, the same principles should apply.

2. Section 40 of the Workmen's Compensation Act

provides as follows:

"Where temporary total disability results from the injury, the compensation shall be a weekly payment of 75% of the workman's average weekly earnings during the previous twelve months if he has been so long employed, but if not then for any less period which he has been in the employ of the employer, and is payable so long as the disability lasts."

Other sections of the Act refer to a twelve month period in computing the average weekly earnings upon which disability compensation is calculated. For reasons of convenience, the practice has arisen of basing computations of average weekly earnings on the four pay periods immediately previous to the accident. Thus increased overtime payments and wage increases have distorted the quantum of compensation paid for temporary total disability. It is respectfully submitted that this practice should cease, and that the provisions of Section 40 be adhered to in computing such payments. This

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recommendation is consonant with the view that Workmen's Compensation payments ought to be aimed at alleviating hardship, and should in no way represent an inducement to malingering or other abuses.

B. PROPOSALS TO REDUCE AND PREVENT ABUSES OF
WORKMEN'S COMPENSATION LEGISLATION

1. In recent years, a number of insurance companies have made available to the public policies which provide for substantial benefits for loss in earnings occasioned by accident. The effect of such insurance may result in a form of "double indemnity" in which a workman who is able to establish disability may earn more by remaining idle than by returning to work. Such a situation is an open invitation to malingering. If the purpose of the Workmen's Compensation

Act is to avoid hardship and not to encourage malingering, then this situation ought not to be permitted to continue.

It is therefore respectfully submitted that disability payments should be limited to the difference between insurance benefits and the statutory maxima provided for in the Workmen's Compensation Act.

2. Frequently a workman may sustain a partial disability which disqualifies him from a certain line of employment but in no way impairs his ability to perform other types of work. For example, a truck driver may sustain a permanent disability which renders him unable to perform heavy work, and subsequently finds himself fully competent and fully employed as a despatcher. In such circumstances, the rationale and justification for partial disability payments is terminated. Such situations emphasize the need

for continuing review of partial disability payments (permanent disability payments should also be reviewed on a continuing basis). In such reviews, the Board should apply the principle that fully employed persons earning as much or more as before an accident do not require and are not entitled to partial disability payments.

3. The Workmen's Compensation Act, in Section 3 (1) (a) provides as follows:

"Where in any employment in which this part applies, personal injury arising out of and in the course of the employment is caused to a workman, his employer is liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned, except where the injury,

- (a) does not disable the workman for a period of at least three calendar days from earning full wages at the work at which he was employed;

The use of the words, "from earning full wages at the work at which he was employed" supports the view, expressed above, that the purpose of the act is to prevent hardship from loss

of earnings occasioned by industrial accidents. This view is in conflict with the use of calendar days rather than working days in determining entitlement to benefit. In our respectful submission, this Section of the Act should be amended to substitute the words "working days" for the words "calendar days" to provide consistency and fairness in accordance with the general principles of the Legislation. This amendment would have the effect of reducing, in some small measure, the costs to employers of Workmen's Compensation and would prevent many claims that are picayune in nature.

4. Disability payments are presently to be computed on the basis of 75% of average weekly earnings during the previous 12 months of employment, to a maximum of \$6,000.00. Although in some circumstances these amounts are excessive, no recommendation is made at present that they be decreased.

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However, any attempt to increase these maxima would invite abuses of the Legislation and affect not only the amount of each claim but also the number of claims made against the fund.

5. The comments made above with respect to continuing review of partial and total disability cases also apply to all claims made against the Workmen's Compensation Fund.

The vigilance of the investigatory staff should be maintained and increased. Recent statistics show that a comparatively small number of persons are involved in a large proportion of all accidents. The suggestion is made that efforts by the Workmen's Compensation Board to identify such "accident prone" persons be continued, and that such persons be referred for appropriate psychological or psychiatric treatment. Employers should be informed of these situations.

6. In addition to the question of compensation paid to and on behalf of injured workmen, it is submitted that the assessment of costs against employers bears re-examination at this time. Although personal injury by accident may arise out of and in the course of employment, often a pre-existing injury or pathologic condition is the root cause of the injury. Such a pre-existing condition may or may not be related to earlier employment. It is submitted that the amount of compensation payable in such a case should be restricted to that portion of the injury which arises out of and in the course of employment. Furthermore, the assessment against a particular employer in such a case should be restricted to that proportion of the cost attributable to employment by that employer. In this connection, the suggestion is made that the operation of

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the "Second Injury Fund" should be formalized and that this fund should be supplemented from other sources to provide for payments made under the Workmen's Compensation Act for pre-existing injuries which are not attributable to injuries sustained in the course of employments.

7. Similarly, inequities may arise when payments are made to workmen on claims which are under appeal. The practise has been to make payments notwithstanding that protest or appeal has been lodged by the employer concerned. Assessment is made against the employer who has, on occasion, been expected to recover amounts paid on claims, which have been the subject of successful appeals, directly from the claimant. This creates unnecessary personnel problems and places the employer concerned in an invidious position. It is therefore recommended that except in cases where hardship would be

imposed upon the claimant, as established to the satisfaction of the Board, that compensation payments in claims under protest or appeal be withheld, pending the outcome of such appeal.

PROPOSALS TO IMPROVE THE ADMINISTRATIVE AND IN PARTICULAR
THE APPEAL PROCEDURES OF THE WORKMEN'S COMPENSATION BOARD

1. It is appreciated that a new system of appeals was established by the Board in 1965 which provided for a greatly improved system in respect of appeals. However, it is felt that further improvement is still possible, particularly with respect to the operations of the Review Committee. At the present, this Committee reviews decisions made by the claims staff on the basis of the evidence on file, pertinent information obtained upon investigation, and any additional

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information supplied through correspondence. Where an appeal

is lodged by a claimant to the Review Committee it has not been the practise to advise employers whose rights will be affected by the decision and, of course, the "correspondence" normally contains representations made on behalf of the claimant with no opportunity of rebuttal by the employer.

Although decisions of the Review Committee can be appealed to the Appeal Tribunal, an employer may find himself charged with the burden of overturning a decision of the Review Committee made on the basis of information and representations which he has had no opportunity to question and rebut. It is, therefore, respectfully submitted that provision be made for submissions by all affected parties at the Review Committee stage, and that all parties be given notice and access to all communications and information considered by the Review

Committee in making its decision.

2. The annual report of the Workmen's Compensation Board tabled in the Legislature on July 10, 1966, contains the following:

"The procedure at Appeal Tribunal hearings is informal. The person making the appeal may choose to be represented by union leaders, Members of the Legislature, a solicitor or other responsible persons, or to conduct his own appeal with the assistance of the Tribunal. He may testify on his own behalf, and call witnesses to assist in presenting his appeal. Cross-examination of witnesses is not permitted, but anyone who may be affected by the Tribunal's decision is entitled to bring forward any evidence bearing on the issue. All evidence is taken down in writing, to be available for future use."

It is respectfully submitted that these provisions can be improved by providing that all parties which may be affected by a decision of the Appeal Tribunal may be represented by counsel or otherwise, that all parties should have the right to cross-examine opposing witnesses and that the files and information upon which the Tribunal's decision will be based

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be as far as possible, open to all parties.

3. Section 86, Sub-Sections 4, 6A and 7 provide

as follows:

"(4) Where in the opinion of the Board sufficient precautions have not been taken for the prevention of accidents to workmen in the employment of an employer or where the working conditions are not safe for workmen or where the employer has not complied with the regulation respecting first aid, the Board may add to the amount of any contribution to the accident fund for which the employer is liable, such a percentage thereof as the Board may deem just and may assess and levy the same upon the employer.

(6A) Where the work injury frequency and the accident cost of the employer are consistently higher than that of the average in the industry in which he is engaged, the Board, as provided by the regulations, may increase the assessment for that employer by such a percentage thereof as the Board may deem just, and may assess and levy the same upon the employer.

(7) The Board, if satisfied that the default was excusable, may in any case relieve the employer in all or in part from liability under Sub-Section 4."

Firstly, it is submitted that the provisions of Sub-Section 7 ought to apply to liability imposed under Sub-Section 6A as well as Sub-Section 4.

However, more importantly, Sub-Section 4 and 6A place the Board in the invidious position of creating and imposing liability

to make extraordinary payments to the fund which the Board itself administers. No provision for an appeal to an independent body has been provided. It is respectfully submitted that where an employer's assessment is increased under Section 86, provision should be made for appeal to an independent body.

4. When a claim is allowed under the Act, assessment is made against the employer forthwith. This is so even though the claim may give rise to litigation against third parties as permitted by the Act. Many months and even years may pass before such litigation is concluded. The end effect is that an employer may be assessed and required to pay a Workmen's Compensation claim for which he is subsequently held, by the Courts, not to be responsible. It is respectfully submitted that claims which are the subject of pending litigation ought not to be assessed against employers until the outcome of such litigation is known.

5. At present, the Workmen's Compensation Board is composed of a Chairman and two Members. Although the Members are not in any sense representatives of any particular segment of society, at present one has a background in the labour movement and the other in medicine. Bearing in mind that the costs of Workmen's Compensation are borne by the employers and that communication between employers and the Board is of benefit to all, it is respectfully submitted that the Board should be expanded to provide for the appointment of a Member with a business background who is knowledgeable of the interests and attitudes of employers.

6. Employers are called on to make annual payments to the fund in a lump sum, often a sizeable amount. This may represent a serious dislocation particularly to the

smaller business. It is not recommended that the lump sum payment provisions be eliminated. However, the suggestion is made that quarterly payments could be provided for, with a nominal sum added to the payment to cover any additional administrative costs.

D. PROPOSALS WITH RESPECT TO ACCIDENT PREVENTION AND
THE ROLE OF THE TRANSPORTATION SAFETY ASSOCIATION

To reduce industrial accidents through effective accident-prevention programs has been a prime concern of the trucking industry. Both as individual employers and through the Transportation Safety Association these efforts have met with considerable success in the past, as shown by the experience of the industry. The growth of the Transportation Safety Association in recent years and the increasing awareness of employers of the importance of

safety provides a solid basis for optimism that these endeavours will be even more effective in the future. Supported entirely from employer contributions to the Workmen's Compensation Fund, the Transportation Safety Association must be encouraged to continue unimpaired.

In any amendments to the Workmen's Compensation Act, recognition should be given to the effect of such amendment on accident prevention programs.

CONCLUSION

In the report of the Honourable Mr. Justice W. D. Roach, Commissioner appointed to inquire into and report upon, and to make recommendations regarding The Workmen's Compensation Act upon subjects other than detail administration, of May '31, 1950, the following words appear:

"If the true purposes and objectives of the Act are adhered to, justice will be done as between industry and labour. If, on the other hand, those purposes are lost sight of, or this Act from time to time be regarded as a convenient place into which to put Legislation which in substance is social and not compensatory, it may become very much distorted. In the result, labour will continue to be relieved from unjust burdens from which it suffered too long under the common law but an injustice will be done to industry by placing on its shoulders burdens which should be borne by society generally."

We heartily subscribe to these views.

The opportunity to convey our views upon this important subject is deeply appreciated. It is understood an opportunity will be available to expand upon the material presented in this Submission.

We have been guided by what we consider to be the interest of the public as a whole and it is in this spirit that these proposals have been made. We are, of course, prepared to submit further information and material which

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may be of assistance to the Commission.

All of which is respectfully submitted this 16th
day of August, A.D. 1966.

THE AUTOMOTIVE TRANSPORT ASSOCIATION
OF ONTARIO

PROCTOR A. DICK, Chairman
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